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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 SHAUN GOODRICH,
10 Plaintiff(s),

11 v.

12 GRG ENTERPRISES, LLC, et al.,
13 Defendant(s).

Case No.: 2:20-cv-00671-JCM-NJK

ORDER

[Docket No. 34]

14 Pending before the Court is a motion for leave to file a third-party complaint, filed by
15 Defendants Callville Bay Resort & Marina and Forever Resorts, LLC (“Defendants”). Docket No.
16 34. The Court has considered Defendants’ motion, Plaintiff’s response, and Defendants’ reply.
17 Docket Nos. 34-1, 37, 38. The motion is properly resolved without a hearing. *See* Local Rule 78-
18 1. For the reasons discussed more fully below, the Court **GRANTS** Defendants’ motion.

19 **I. BACKGROUND**

20 Plaintiff alleges that, upon returning from a boat excursion at approximately 8:00 p.m. on
21 May 28, 2018, he sustained a head injury after tripping on a power cord loosely attached to
22 Defendants’ marina dock. *See* Docket No. 34-4 at 5. Plaintiff filed suit against Defendants for
23 negligence in state court on March 1, 2020.¹ *See id.* at 2, 7–8. Defendants removed the action to
24 this Court on April 10, 2020. *See* Docket No. 1. On April 17, 2020, Defendants filed an answer.²
25 *See* Docket No. 14. Thereafter, the Court entered a scheduling order and set a deadline of

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27 ¹ Plaintiff filed an amended complaint on March 25, 2020. Docket No. 34-1 at 2.

28 ² Defendants also filed a crossclaim against Defendants GRG Enterprises, LLC. *See* Docket No. 14.

September 15, 2020, to amend pleadings and add parties. Docket No. 28 at 3. On September 15, 2020, Defendants filed the instant motion for leave to file a third-party complaint. *See* Docket No. 34.

II. LEGAL STANDARD

Under Rule 14(a), a defending party, as a third-party plaintiff, may implead a third-party defendant “who is or may be liable to it for all or part of the claim against it.”³ Fed.R.Civ.P. 14(a). The defending party “must, by motion, obtain the court’s leave if it files the third-party complaint more than 14 days after serving its original answer.” *Id.* “[A] third-party claim may be asserted only when the third party’s liability is in some way dependent on the outcome of the main claim and is secondary or derivative thereof.” *Stewart v. Am. Intern. Oil & Gas Co.*, 845 F.2d 196, 199 (9th Cir. 1988). “The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.” *Id.* (citation omitted). “Rule 14 was designed to provide for the adjudication of rights of all persons involved in a controversy in order to avoid circuitry of actions and multiplicity of suits.” *Nev. Eighty-Eight, Inc. v. Title Ins. Co. of Minn.*, 753 F. Supp. 1516, 1529 (D. Nev. 1990). “The decision on leave to file a third-party complaint is within the district court’s sound discretion.” *Clark Cty. v. Jacobs Facilities, Inc.*, 2011 WL 4458797, at *1 (D. Nev. Sept. 23, 2011).

III. ANALYSIS

Defendants argue that leave to file a third-party complaint against Horch is proper because its claims against Horch are based on Plaintiff’s claims against Defendants. Docket No. 34-1 at 5. Upon filing his complaint, Plaintiff alleged that, on the evening he tripped and fell, he returned to Defendants’ marina dock “with a party on a slip customer’s boat.” Docket No. 34-5 at 5. In response to an interrogatory, Plaintiff identified Horch as the “slip customer.” Docket No. 34-1 at 3. Defendants submit that Horch is a resident of Las Vegas, Nevada and rents a boat slip at Defendants’ marina dock. *Id.* Defendants submit that Horch signed a Moorage License Agreement in February 2018. *Id.* Defendants further submit that the agreement indemnifies

³ Unless otherwise noted, references to “Rules” refer to the Federal Rules of Civil Procedure.

1 Defendants from certain claims arising from Horch's rental of the boat slip on Defendants' marina
2 dock. *Id.* Specifically, Defendants contend that the "valid and enforceable" Moorage License
3 Agreement entitles them to contractual indemnity from Horch for any recovery that may result
4 from the instant action. *Id.* at 4. Thus, Defendants seek leave to file a third-party complaint against
5 Horch for contractual indemnity. *Id.*

6 Defendants submit that Plaintiff's discovery responses reveal that Horch was with Plaintiff
7 on the boat and that Plaintiff drank beer while on board Horch's boat prior to the alleged incident.
8 *Id.* Defendants further submit that the Moorage License Agreement imposes a duty of care upon
9 Horch toward Plaintiff, which Horch breached when he allowed Plaintiff to consume beer on his
10 boat. *Id.* Defendants submit that, "Horch . . . caused and/or contributed to the injuries and damages
11 claimed by [Plaintiff]." *Id.* As a result, Defendants' proposed third-party complaint against Horch
12 also asserts equitable indemnity and contribution claims. *Id.*

13 In response, Plaintiff submits that leave to file a third-party complaint against Horch is not
14 proper "because there is no cognizable claim" against Horch. Docket No. 37 at 3. Plaintiff further
15 submits that the Moorage License Agreement "does not include indemnity for injuries suffered by
16 Horch as a result of [Defendants'] negligence[.]" *Id.* The agreement, Plaintiff contends, "does not
17 have an indemnification of 'any and all claims' without limitation." *Id.* Plaintiff therefore disputes
18 Defendants' reading of the Moorage License Agreement, arguing that the terms in the agreement
19 do not indemnify Defendants from the instant claims.

20 In reply, Defendants submit that "the enforceability of the Moorage License Agreement's
21 indemnity provisions . . . is not an issue in this motion." Docket No. 38 at 3. Defendants further
22 submit that no basis exists "to argue compliance with or lack of *Twombly/Iqbal* issues in relation
23 to a timely motion for leave to file a third party complaint, nor does Plaintiff have standing to make
24 such arguments on behalf of Horch." *Id.*

25 The Court finds that granting leave to file a third-party complaint against Horch will "avoid
26 circuitry of actions and multiplicity of suits." *Nev. Eighty-Eight, Inc.*, 753 F. Supp. at 1529.
27 Defendants' third-party complaint alleges that the Moorage License Agreement renders Horch
28 derivatively liable for any recovery that may result in the instant action. Defendants seek to hold

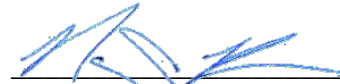
1 Horch liable insofar as Defendants themselves are held liable in the instant case. Clearly, Horch's
2 "liability is in some way dependent on the outcome of the main claim and is secondary or
3 derivative thereof." *Stewart*, 845 F.2d at 199. Further, whether Defendants' third-party complaint
4 states a claim upon which relief can be granted is inconsequential for purposes of the instant
5 motion. At the appropriate time, Horch as third-party may raise any objections to the merits of
6 Defendants' third-party complaint. *See Jacobs Facilities*, 2011 WL 4458797, at *1 ("Any Rule
7 12 defenses to Defendants' third-party claims are properly raised by TSKA as third-party
8 defendant in its answer to the third-party complaint, not by . . . the original plaintiff in opposition
9 to a motion for leave to file.")

10 **IV. CONCLUSION**

11 Accordingly, Defendants' motion for leave to file a third-party complaint is **GRANTED**.
12 Docket No. 34. Defendants shall promptly file and serve their third-party complaint.

13 IT IS SO ORDERED.

14 Dated: October 8, 2020

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17 Nancy J. Koppe
18 United States Magistrate Judge
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